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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 AMANDA POPE and RICH POPE ,

12 Plaintiffs,

13 v.

14 UNITED STATES OF AMERICA,

15 Defendant.  
16

CASE NO. 3:17-cv-05868-RJB

ORDER ON DEFENDANT THE  
UNITED STATES' MOTION TO  
CONTINUE TRIAL

17 THIS MATTER comes before the Court on Defendant the United States' Renewed  
18 Motion to Continue Trial. Dkt. 57. The Court has considered the motion, Plaintiffs' Response,  
19 Defendant's Reply, and the remainder of the file herein.

20 Defendant seeks to continue the trial date of January 14, 2018, attendant trial deadlines,  
21 and the deadline for discovery of Nov. 19, 2018. Defendant previously filed a motion to continue  
22 trial, which was denied without prejudice on September 27, 2018 on account of Defendant's  
23 deficient good cause showing. Dkt. 49.  
24

1 Defendant argues that a continuance is justified by Defendant's diligence and by the need  
2 to complete outstanding discovery. Per Defendant, the following discovery remains: (1) hospital  
3 records from Mrs. Pope's two-week hospital stay in October of 2018; (2) expert depositions of  
4 Dr. Shrager, Dr. Schipper, and Ms. Stajduhar, currently scheduled for November 26, 28, and  
5 29<sup>th</sup>, respectively; (3) treating provider depositions of Dr. Lobb (primary care physician) and Dr.  
6 Malhotra (pulmonologist), not yet scheduled; (4) physical and occupational therapy records  
7 discovered as a result of Ms. Pope's independent medical exam (IME).

8 Plaintiff opposes continuing trial, and in the alternative proposes a continuance to  
9 February 25, 2019, based on counsel's availability. Plaintiff opposes trial on several grounds:

10 (1) Mrs. Pope will require treatment and periodic hospitalizations for the rest of her  
11 life, (2) the expert depositions will be completed by November 28, 2018, and the two  
12 remaining treating provider depositions will be scheduled shortly, and (3) a couple  
13 physical therapy and occupational therapy notes are not a sufficient basis to delay  
14 trial, especially given that Defendant's experts have opined Mrs. Pope does not need  
15 such therapies.

16 Dkt. 60 at 6.

17 Under Rule 16, case scheduling orders may be modified upon a showing of good cause and  
18 with the judge's consent. W.D.Wash. LCR 16(b)(5); Fed. R. Civ. P. 16(b)(4). "Mere failure to  
19 complete discovery . . . does not constitute good cause." *Id.* The Rule 16 good cause standard  
20 "primarily considers the diligence of the party seeking the amendment." *Johnson v. Mammoth*  
21 *Recreations, Inc.*, 975 F.2d 604, 608 (9<sup>th</sup> Cir.1992). Courts may also consider prejudice to the party  
22 opposing the continuance. *Id.* at 609.

23 Defendant has demonstrated its diligence in pursuing discovery. Since the prior order was  
24 issued denying the continuance without prejudice, the parties have engaged in substantial and  
meaningful discovery exchange. *See* Dkt. 59 at ¶7; Dkts. 59-1 to 51-9, 59-10; Dkt. 61 at 6, 7, 89,

1 90. Diligence is the touchstone of good cause, a showing that Defendant has satisfied. A  
2 continuance is warranted.

3 The more difficult issue is the duration for the continuance. Plaintiff proposes continuing  
4 trial six weeks to February 25, 2019, a date that Plaintiff has acknowledged may conflict with  
5 other trials of this Court. After that date, Plaintiff's counsel is unavailable until May of 2019.  
6 Continuing trial until May of 2019, Plaintiff argues, is not justified by Defendant's showing, and  
7 such a delay would prejudice Plaintiff, who is in fragile health.

8 Defendant has proposed a two month timeframe for continuing trial. Dkt. 57 at 9. *See*  
9 *also*, Dkt. 59-10 at 2 (Plaintiff's counsel proposed by email a continuance of two months for trial  
10 and two weeks for discovery). It is not clear from Defendant's Reply why continuing trial to  
11 February 25, 2019 would not be acceptable, where all but two depositions are already scheduled,  
12 and Plaintiff has not opposed third party discovery by Defendant. Under the circumstances, the  
13 Court finds that a continuance to February 25, 2019 is appropriate.

14 As Plaintiff acknowledges, resetting trial to February 25, 2019 runs the risk that trial may  
15 not commence on that date, because several other matters have already been scheduled and have  
16 a priority over this case. Such is the hazard of trial settings.

17 \* \* \*

18 THEREFORE, it is HEREBY ORDERED that Defendant the United States' Renewed  
19 Motion to Continue Trial is GRANTED.

20 The Scheduling Order (Dkt. 20) is HEREBY AMENDED to the following:

21 Trial: February 25, 2019 at 9:30am

22 Pretrial Conference: February 15, 2019 at 8:30am

23 Trial Brief Deadlines: February 15, 2019

1 Pretrial Order Deadline: February 8, 2019

2 Motions in Limine Deadline: January 28, 2019

3 Discovery Deadline: December 14, 2018

4 No other deadlines are modified.

5 IT IS SO ORDERED.

6 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
7 to any party appearing *pro se* at said party's last known address.

8 Dated this 20<sup>th</sup> day of November, 2018.

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11 ROBERT J. BRYAN  
12 United States District Judge  
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